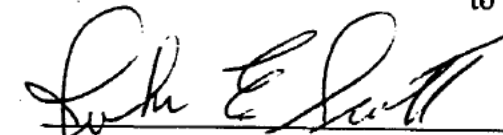


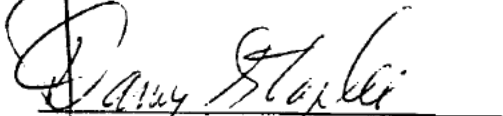
**Report of the
Joint Interim Committee
on Tobacco**

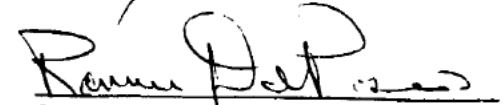
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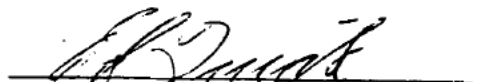
TO THE PRESIDENT PRO TEMPORE
OF THE SENATE
AND THE SPEAKER
OF THE
HOUSE OF REPRESENTATIVES
OF THE NINETIETH GENERAL ASSEMBLY
OF THE STATE OF MISSOURI

Your Joint Interim Committee on Tobacco begs leave
to submit the following report:


Senator John Scott, Chairman


Senator Danny Staples

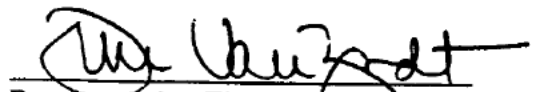

Senator Ronnie DePasco

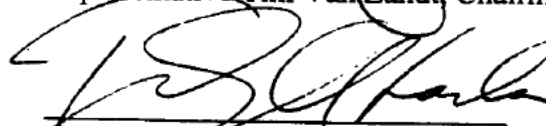

Senator Edward E. Quick

Senator Steve Ehlmann

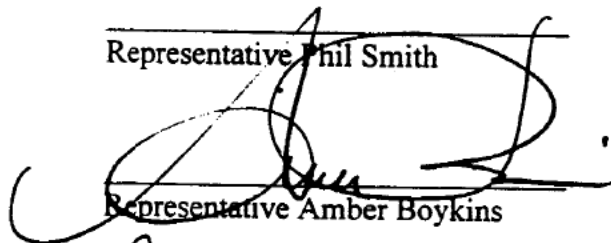
Senator Franc Flotron

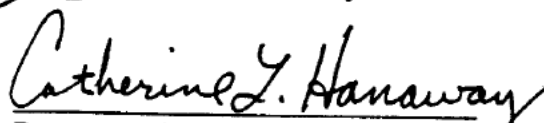
Senator David Klarich


Representative Tim Van Zandt, Chairman

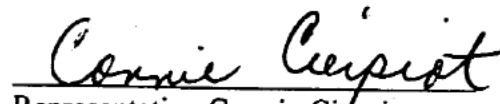

Representative Tim Harlan

Representative Phil Smith


Representative Amber Boykins


Representative Catherine Hanaway


Representative Michael Gibbons


Representative Connie Cierpiot

REPORT OF THE
JOINT INTERIM COMMITTEE
ON
TOBACCO

COMMITTEE MEMBERS

Senator John Scott, Chair
Senator Danny Staples
Senator Ronnie DePasco
Senator Edward E. Quick
Senator Steve Ehlmann
Senator Franc Flotron
Senator David Klarich

Representative Tim Van Zandt, Chair
Representative Tim Harlan
Representative Phil Smith
Representative Amber Boykins
Representative Catherine Hanaway
Representative Michael Gibbons
Representative Connie Cierpiot

STAFF

Joan Gummels, Senate Research
Bill Tucker, House Research

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I. INTRODUCTION

We respectfully submit to you the Report of the Joint Interim Committee on Tobacco. On August 20, 1999, the President Pro Tem of the Senate, Senator Edward E. Quick, and the Speaker of the House, Representative Steve Gaw, established the Committee and instructed it to determine the short and long term financial and constitutional consequences associated with the tobacco settlement proceeds that the state expects to receive as a result of the Master Settlement Agreement.

The Committee held public hearings on three days in November, 1999. The hearings took place on November 1 in Kansas City, November 8 in St. Louis and November 15 in Jefferson City. A total of 86 individuals or organizations testified before the Committee and several submitted written materials in lieu of oral testimony.

II. EXECUTIVE SUMMARY AND MAJOR RECOMMENDATION

Missouri has not yet received any of the tobacco settlement proceeds, and will not receive any until a decision is issued in the state's case, and any further appeal times have run. Several parties, including public hospitals and other political subdivisions of the state, are appealing the Master Settlement Agreement and the denial of motions to intervene in the case at the trial level. The case is currently pending before the Missouri Court of Appeals, Eastern District.

Under the terms of the Master Settlement Agreement, Missouri could potentially receive a total of approximately \$4.4 billion over the next 25 years, or an estimated \$6.7 billion adjusted for inflation. Although this amount appears to be a huge windfall for the state, the yearly projected payments represent approximately 1.5% of the entire state budget. In addition, several factors weigh heavily in any determination regarding use of the tobacco proceeds, including the inability to predict with any certainty the exact amount the state will actually receive in any given year and what effect, if any, the payments will have on the revenue lid contained in the state constitution.

Based upon all of the above considerations and the information presented to the Committee, the Committee's major recommendation is that a constitutional amendment be adopted by the people of the state to exclude the proceeds from the calculation of total state revenue and to allow the use of the settlement proceeds for specific purposes. In addition, the General Assembly should enact enabling legislation prior to the submission of the constitutional amendment, establishing a trust fund for deposit of the proceeds and setting guidelines and percentages for use of the funds.

III. HISTORY AND TERMS OF THE TOBACCO SETTLEMENT

A. Status of the Tobacco Lawsuit

On May 12, 1997, the Attorney General filed a lawsuit on behalf of the state of Missouri in the Circuit Court of the City of St. Louis against various tobacco entities. The state sued 18 tobacco companies, 3 nonprofit corporations that conducted public relations, lobbying or research for the companies, and 1 public relations firm (hereinafter collectively referred to as "Tobacco").

On November 23, 1998, the Attorneys General of 46 states, including Missouri, announced they had reached an agreement, called the Master Settlement Agreement (hereinafter "MSA"), with the major tobacco companies to end pending litigation. In Missouri, settlement was approved by the Circuit Court of the City of St. Louis on March 5, 1999. The approval of the settlement is currently being appealed by several of the parties denied intervention in the case, including various political subdivisions and public hospitals of the state. The appeal is currently pending before the Missouri Court of Appeals, Eastern District.

B. Released Claims

The state's lawsuit was based on a number of different claims and causes of action. These were:

- violations of the Missouri Merchandising Act (misrepresentations and omissions, unfair targeting of minors);
- antitrust;
- unjust enrichment/restitution;
- indemnity for health care costs;
- civil conspiracy;
- aiding and abetting the other companies in all violations;
- strict liability for a dangerous product;
- negligence;
- fraud;
- public nuisance; and
- an injunction against unfair or unlawful practices.

These claims were dismissed pursuant to the provisions of the MSA.

The term "Released Claims", however, is more broadly defined in the MSA. (See Appendix B.) As part of the settlement, the state releases any past or future claims, seen or unforeseen, based on acts or omissions directly or indirectly related to: (A) the use, sale, distribution, manufacture, development, advertising, marketing or health effects of tobacco products; (B) the exposure to tobacco products; or (C) research, statements and warnings regarding tobacco products. The released claims include the ones enumerated in the lawsuit, any other past claims of the state, as well as any of the above claims that could have been asserted now or in the future, in any court.

In addition, the definition of "releasing parties" in the MSA includes, "to the full extent of the power" of the Attorney General to release their claims, any political subdivisions of the state, public entities and public educational institutions, and any taxpayer alleging injury to the general public or expenses that have already been paid by the state. (See Appendix B.) If the release of political subdivisions is unenforceable, any monies obtained by a political subdivision as a result of a claim would be offset against the state's settlement proceeds on a dollar-for-dollar basis. There are three exceptions to the offset: Tobacco wins the case; Tobacco fails to "defend fully" against the claim; or the Attorney General does not consent to a settlement and that consent is not "unreasonably withheld". The extent of the authority of the Attorney General to waive the claims of any political subdivisions is one of the issues raised by the parties in the Court of Appeals.

C. Settlement Proceeds

The MSA provides that Tobacco will make all payments (except costs and attorneys' fees) into an escrow account; the funds will then be credited to the proper state in a sub-account and held until they are paid to the state treasury. Missouri's maximum share of the total payments made to the states involved in the Master Settlement Agreement is 2.2746011%, estimated to be \$4.4 billion, or \$6.7 billion adjusted for inflation over 25 years. Most of the payments to the state are made to 2025, although the MSA provides that Tobacco pay \$9,000,000 annually (before reductions, offsets or adjustments) to the states in perpetuity. Missouri would receive its allocable percentage, noted above, of this amount. Missouri's yearly payments as outlined in the MSA are listed in Appendix A, taking into account the previously settled states' reduction, discussed below.

IV. RELEVANT FACTORS RELATING TO PAYMENTS

A. Date to Receive Payments

The date of receipt of the first payment is uncertain. The MSA contains a schedule of payments to be made into the account. Payments from the account to the various states could not begin until after "Final Approval" was obtained -- the date by which a "sufficient number" of states (80% of the states involved representing 80% of the total payments) formally settled and dismissed their lawsuits. Final Approval was reached nationally on November 12, 1999.

Unlike most other states, however, Missouri is not yet entitled to receive any of its payments pursuant to the MSA. Before the state's payments are issued to the state treasurer, Missouri must have "State Specific Finality" -- the state's case must be finally decided, either by judgment or settlement, including the expiration of any applicable appeal period. (See Appendix B.) As previously mentioned, Missouri's tobacco case is still pending before the Court of Appeals, Eastern District.

The payments to the states fall into three categories:

- **Initial Payments**, the first issued in 1998, and then on January 10, 2000 - 2003;

- **Annual Payments**, issued on April 15 of each year, beginning in 2000; and
- **Strategic Contribution Fund Payments**, issued on April 15, 2008 - 2017.

B. Unpredictability of Payment Amounts

The exact amount of money the state will receive each year as a result of the MSA is uncertain. The distribution to each state is subject to a variety of possible offsets, adjustments and reductions. Some of these apply to annual payments, while most apply to both annual and initial payments. Following is a brief description of each calculation of this type contained in the MSA:

1. **Inflation Adjustment:** Each annual payment is subject to this adjustment, which equals the greater of the consumer price index (CPI) for the preceding year, or 3%.
2. **Volume Adjustment:** After the inflation adjustment is calculated, initial and annual payments are subject to a volume adjustment, based on Participating Manufacturers' domestic shipping volume increases or decreases compared to a 1997 baseline. The MSA outlines the formula to calculate a volume adjustment as "Payment x .98 x Decline in Volume".
3. **Previously Settled States Reduction:** Four states settled with Tobacco prior to the MSA: Texas, Florida, Minnesota and Mississippi. All annual payments are reduced to account for the payments to these states. The reduction is a fixed percentage: 12.45% on payments through 2006; 12.24% on payments in 2007 - 2017; and 11.07% on payments in 2018 and all subsequent years. (The chart of payments in Appendix A already accounts for this reduction.)
4. **Non-Settling States Reduction:** This reduction allows Tobacco to reduce its overall obligation under the MSA, by deducting the amount owed to any state that terminates its participation in the MSA. It does not affect the payments owed to any other states.
5. **Non-Participating Manufacturer Adjustment:** If Participating Manufacturers experience a market share loss of more than 2% from their 1997 share of the market, and this market share loss is due to the

MSA, Tobacco can adjust payments to states that have not passed or are unable to enforce a Qualifying Statute or Model Statute (see Appendix B). Missouri enacted the Model Statute in 1999; therefore, if the statute is later ruled unconstitutional and cannot be enforced, Missouri's payment reduction should be capped at 65%.

6. Offset for Miscalculated/Disputed Payments:

State payments will be adjusted to account for any errors.

7. Federal Tobacco Legislation Offset: Any unrestricted federal funds, or federal funds earmarked for health care or tobacco, that are paid to the state as a result of new tobacco tax increases made prior to November 30, 2002, result in a direct offset against the state payments.

8. Litigating Releasing Parties Offset: Any judgments against Tobacco in favor of political subdivisions of Missouri including public hospitals, or any such settlement approved by the Attorney General, will result in a direct offset from the state payment.

9. Offsets for "Claims Over": The state payment will be directly offset if Missouri wins a judgment against a tobacco company or a retailer, supplier or distributor of a Participating Manufacturer, and the Participating Manufacturer is obligated to reimburse that party.

The calculations involved in the above offsets, reductions and adjustments to the payments that Missouri is scheduled to receive are based on future, unknown events. Therefore, it is not possible to know or even accurately predict the exact amount of proceeds that will be deposited with the state.

C. Constitutional State Revenue Considerations

Art. X, §17, of the Missouri Constitution defines "total state revenues" as including "all general and special revenues, excluding federal funds..." Art. X, §18(e) requires a pro rata refund to taxpayers of excess total state revenues. Several Committee members voiced a concern that because the tobacco payments will be paid into the state treasury and appropriated by the General Assembly, they could possibly meet the definition of total state revenues contained in Kelly v. Hanson, 959

S.W.2d 107 (1997); however, this is an open question in the state. We have no Missouri Supreme Court case directly on point. If the payments are considered in the total state revenue calculation, they may increase the level of state revenue in any year beyond the revenue ceiling established in Article X, triggering a refund to income taxpayers in that year.

During a hearing of the Joint Interim Committee, a representative of the Office of Administration stated that the money would be coded for accounting purposes as "reimbursement" for medicare claims, and therefore should not be considered total state revenue. Members of the Committee pointed to the terms contained in the MSA to support a different conclusion, as the MSA explicitly states that the payments are in exchange for releasing any past or future claims, seen or unforeseen, based on acts or omissions directly or indirectly related to the use, sale, distribution, manufacture, development, advertising, marketing or health effects of tobacco products. At the most fundamental analysis, they argued, the proceeds are in exchange for release of the above-mentioned past and future claims, and not for any one specific prior expenditure by the state.

As previously noted, the issue of whether the settlement proceeds constitute total state revenue under Article X of the Missouri constitution is an open question. The issue can be resolved in one of two ways: through litigation in the state courts, or through a vote of the people to amend the constitution.

D. Uses for State Payments

The MSA does not restrict or specify any use for the payments that the state will receive. The National Conference of State Legislatures reports that as of early September, 1999, 23 states (including the 4 states that settled prior to the MSA) have passed enabling legislation or appropriation acts that designate general purposes for which the money should be spent. Only 12% of the total funds, however, have been dedicated for specific programs. 19 states have enacted laws to place the state payments into a trust fund, while 4 have chosen to utilize an endowment fund; some states have used both methods. The general purposes for which the money is to be used vary greatly. The designated uses for the money include health care, education and scholarship funds, children's services, tobacco control and smoking cessation programs, assistance to tobacco growers, and long term care for the elderly, as well as other state interests such as water control, highway construction and veterans' homes.

E. Additional Designated Funds

In addition to -- and completely separate from -- the state payments, the settlement agreement contains provisions to fund efforts targeted at tobacco education and reducing teen smoking. The MSA requires the tobacco industry to contribute \$250 million over the next ten years to support a national charitable foundation, called the American Legacy Foundation, for the study and development of programs regarding teen smoking, substance abuse, and prevention of tobacco-related diseases.

The Foundation will also oversee the National Public Education Fund, for which the tobacco

industry will contribute \$1.45 billion over the next 5 years. The American Legacy Foundation will oversee the Fund. The purpose of the Fund is to implement a national advertising and education program to counter youth tobacco use and to educate consumers about diseases associated with tobacco use.

V. OPTIONS FOR RECEIPT OF SETTLEMENT PROCEEDS

There are three basic methods for receipt of the state tobacco payments. Following is a brief description of each, as well as its obvious advantages or disadvantages.

A. Special Fund, with Dedicated Purposes

First, the state could designate a special fund to receive the tobacco proceeds, and specify purposes for the funds. If the fund is legally designated as outside of total state revenue, the maximum amount of state payments from the settlement could be used for the specified purposes. The fund could be structured as a trust fund, with the income appropriated by the General Assembly consistent with the designated purpose. Among the advantages of this approach are the inherent mechanism to account for the tobacco funds separate from general revenue; the ability to use the total yearly payments, if necessary; and a consensus on the general uses for the proceeds in advance of the annual appropriations process. Another option would be to structure the fund as an endowment, preserving the principal and spending only the interest. While this method shares some of the same benefits as a trust fund, one immediate disadvantage results from the low interest balance available in the earlier years of the payment schedule.

B. Annual Appropriation

Second, the state can simply spend the funds as they are received annually through the usual appropriation process. The benefit of this approach is that if the payments are significantly less than anticipated, no funds are committed in advance to specific programs or purposes which would then have to be found from another source. There are multiple disadvantages to this approach: the constitutional revenue lid may be reached in any given year resulting in uncertain revenue streams, the annual debate over the purposes of the payments could distract from the legislative session, and any entities funded by the payments could not predict what amount of or even whether the funds would continue from year to year.

C. Securitization

A third option is to sell the state's interest in future payments for immediate cash, commonly referred to as securitization of payments. This approach results in large payments in early years, and serves to separate the state philosophically from the future sales of tobacco. Whether the approach is fiscally advantageous, however, depends upon several factors: the management of the cash reserves, the strength or weakness of any bond rating, and the state revenue lid. The last factor is perhaps the riskiest, in that if the payments are legally considered total state revenue, then the

proceeds from securitization could also be defined the same way and possibly result in a one-time refund to taxpayers with no future revenue stream for any purpose.

VI. TESTIMONY OF WITNESSES

Witnesses presented testimony before the Joint Interim Committee in Kansas City, St. Louis and Jefferson City. Their testimony represented four main interests: health care, anti-teen smoking, research and technology development, and hospitals and political subdivisions. Following is a brief summary of each, as well as an overview of other suggestions offered for the use of the tobacco funds.

A. Health Concerns

Numerous witnesses submitted recommendations that the proceeds from the tobacco settlement should be used for health care, treatment of illnesses directly related to smoking and tobacco use, and smoking prevention. The witnesses stated that the monies represent payments from tobacco companies for reimbursement of cost for tobacco related diseases and should be used to treat the diseases and to prevent their future occurrence through tobacco use prevention, education and cessation programs.

The majority of these witnesses recommended either full or partial funding of the Centers for Disease Control (CDC) "Comprehensive Tobacco Control Plan". The CDC plan recommends various programs for states to adopt related to tobacco cessation and education for children and adults. The plan only recommends programs that have measured results from their use in other states.

The committee also heard recommendations for use of the tobacco settlement monies for general health care initiatives. Included were recommendations to use funding to assist in the training of physicians, subsidize the health care costs of the indigent or uninsured, subsidize long-term health care, fund programs to offset the cost of prescription drugs for the elderly and support a lead abatement program.

B. Youth Tobacco Use

Various organizations representing schools and youth groups recommended that a portion of the tobacco settlement proceeds be directed towards youth/peer group efforts to educate about the hazards of smoking and promote the "not cool" perception of tobacco use.

Training for teachers, programs for the parents and youth cessation services were recommended. Some recommended promoting alternatives to smoking for children and combining of youth/peer programs with community-based efforts to educate about the perils of smoking.

C. Life Sciences Research and Development

Several witnesses urged the Committee to dedicate a substantial portion of the tobacco proceeds to support the development of life science projects. In Kansas City, the anticipated Stowers Institute received particular mention. The Stowers Institute was described as a private initiative to create a major scientific research center in Kansas City over the next 10 years, developed by business, academic and bio-medical entities. Witnesses urged the Committee to allocate funds to assist this program in order to create a structure for commercialization of intellectual property, and to compliment and maximize the Institute's activities in order for it to develop into a nationally recognized center of life sciences and entrepreneurial activity. Witnesses stated that although \$100 million was expended annually in the Kansas City area in life sciences, they sought an increase to \$500 million annually in order to compete on a national basis.

D. Hospitals, Other Health Care Providers and Political Subdivisions

The committee heard testimony from hospitals and other health care providers, both private and political subdivisions of the state, recommending the use of tobacco settlement proceeds for the reimbursement of uncompensated costs from the treatment of patients with tobacco related illnesses. They recommended that at least 50% of the tobacco settlement monies be used for past and future compensation to providers of tobacco related health care of the indigent and uninsured.

Some hospitals, providers and other political subdivisions have filed an appeal from the denial of their motion to intervene in the tobacco settlement, claiming a share of proceeds from the agreement. The interveners stated the MSA precludes them from proceeding with a lawsuit, and releases their claims against tobacco manufacturers to recover nonreimbursed costs related to the treatment of patients with tobacco related illnesses. The interveners stated they have documentation showing damages near one billion dollars.

E. Other Recommendations of Witnesses

The committee was addressed by Senator Wayne Goode, Appropriations Chair of the Missouri Senate. He stated that the Committee and the General Assembly should use caution in earmarking some or all of the proceeds from the tobacco settlement because of the projection of a tight state budget in the next few years. He specifically recommended that a portion of the settlement monies be reserved for emergency needs should they arise. He explained that recent tax cuts and mandatory expenditures have significantly reduced the amount of discretionary funds available for expenditures within the appropriations process and a significant shortfall could occur if the state's economy turns downward.

The committee also received testimony from various witnesses recommending expenditure of tobacco settlement monies for programs that assist and care for persons with disabilities. It was stressed by the witnesses that current programs in Missouri are significantly underfunded and a share of the settlement monies would make a substantial difference. Specific recommendations included

personal care assistance programs, independent living centers, life skills programs and programs for the deaf/blind.

VII. SUMMARY OF COMMITTEE RECOMMENDATIONS

1. Propose a constitutional amendment to the voters of the state to allow the receipt and use of the tobacco settlement monies for specific purposes.
2. Enact enabling legislation prior to the submission of the constitutional amendment that establishes a trust fund for deposit and accounting of the settlement monies.
3. Enact enabling legislation that sets specific guidelines and percentages for use of the monies and is contingent upon passage of the constitutional amendment.

APPENDIX A

SCHEDULE OF PAYMENTS TO MISSOURI AFTER CALCULATION OF PREVIOUSLY SETTLED STATES' REDUCTION AND BEFORE ANY OTHER OFFSETS, REDUCTIONS OR ADJUSTMENTS

12/28/98	\$54,590,426.40			
Year	Initial Payment (January 10)	Annual Payment (April 15)	Strategic Contribution Fund Payment (April 15)	Total
1999	-----	-----	-----	-----
2000	\$ 56,228,139.19	\$ 89,613,596.84	-----	\$ 145,841,738.03
2001	\$ 57,914,983.37	\$ 99,570,663.15	-----	\$ 157,485,646.52
2002	\$ 59,652,432.87	\$ 129,441,862.10	-----	\$ 189,094,294.97
2003	\$ 61,442,005.85	\$ 129,441,862.10	-----	\$ 190,883,867.95
2004	\$ 159,313,061.04	-----	-----	\$ 159,313,061.04
2005	\$ 159,313,061.04	-----	-----	\$ 159,313,061.04
2006	\$ 159,313,061.04	-----	-----	\$ 159,313,061.04
2007	\$ 159,313,061.04	-----	-----	\$ 159,313,061.04
2008	\$ 162,474,756.57	-----	\$ 13,358,294.46	\$ 175,833,051.03
2009	\$ 162,474,756.57	-----	\$ 13,358,294.46	\$ 175,833,051.03
2010	\$ 162,474,756.57	-----	\$ 13,358,294.46	\$ 175,833,051.03
2011	\$ 162,474,756.57	-----	\$ 13,358,294.46	\$ 175,833,051.03
2012	\$ 162,474,756.57	-----	\$ 13,358,294.46	\$ 175,833,051.03
2013	\$ 162,474,756.57	-----	\$ 13,358,294.46	\$ 175,833,051.03
2014	\$ 162,474,756.57	-----	\$ 13,358,294.46	\$ 175,833,051.03
2015	\$ 162,474,756.57	-----	\$ 13,358,294.46	\$ 175,833,051.03
2016	\$ 162,474,756.57	-----	\$ 13,358,294.46	\$ 175,833,051.03

2017	\$ 162,474,756.57	-----	\$ 13,358,294.46	\$ 175,833,051.03
2018	\$182,059,071.98	-----	-----	\$ 182,059,071.98
2019	\$182,059,071.98	-----	-----	\$ 182,059,071.98
2020	\$182,059,071.98	-----	-----	\$ 182,059,071.98
2021	\$182,059,071.98	-----	-----	\$ 182,059,071.98
2022	\$182,059,071.98	-----	-----	\$ 182,059,071.98
2023	\$182,059,071.98	-----	-----	\$ 182,059,071.98
2024	\$182,059,071.98	-----	-----	\$ 182,059,071.98
2025	\$182,059,071.98	-----	-----	\$ 182,059,071.98
2026 and each subsequent year (approximate gross amount)	\$ 22,655,016.00	-----	-----	\$ 22,655,016.00

Sources: Master Settlement Agreement
 National Conference of State Legislatures
 National Governors' Association (12/14/99)

APPENDIX B
TERMS FROM THE MASTER SETTLEMENT AGREEMENT

(The following definitions are excerpts from the MSA,
and any sectional references refer to other parts of the Agreement)

- "Claims"** means any and all manner of civil (i.e., non-criminal): claims, demands, actions, suits, causes of action, damages (whenever incurred), liabilities of any nature including civil penalties and punitive damages, as well as costs, expenses and attorneys' fees (except as to the Original Participating Manufacturers' obligations under section XVII), known or unknown, suspected or unsuspected, accrued or unaccrued, whether legal, equitable, or statutory.
- "Market Share"** means a Tobacco Product Manufacturer's respective share (expressed as a percentage) of the total number of individual Cigarettes sold in the fifty United States, the District of Columbia and Puerto Rico during the applicable calendar year, as measured by excise taxes collected by the federal government and, in the case of sales in Puerto Rico, arbitrios de cigarillos collected by the Puerto Rico taxing authority. For purposes of the definition and determination of "Market Share" with respect to calculations under subsection IX(i), 0.09 ounces of "roll your own" tobacco shall constitute one individual Cigarette; for purposes of the definition and determination of "Market Share" with respect to all other calculations, 0.0325 ounces of "roll your own" tobacco shall constitute one individual Cigarette.
- "Original Participating Manufacturers"** means the following: Brown & Williamson Tobacco Corporation, Lorillard Tobacco Company, Philip Morris Incorporated and R.J. Reynolds Tobacco Company, and the respective successors of each of the foregoing. Except as expressly provided in this Agreement, once an entity becomes an Original Participating Manufacturer, such entity shall permanently retain the status of Original Participating Manufacturer.
- "Participating Manufacturer"** means a Tobacco Product Manufacturer that is or becomes a signatory to this Agreement, provided that (1) in the case of a Tobacco Product Manufacturer that is not an Original Participating Manufacturer, such Tobacco Product Manufacturer is bound by this Agreement and the Consent Decree (or, in any Settling State that does not permit amendment of the Consent Decree, a consent decree containing terms identical to those set forth in the Consent Decree) in all Settling States in which this Agreement and the Consent Decree binds Original Participating Manufacturers (provided, however, that such Tobacco Product Manufacturer need only become bound by the Consent Decree in those Settling States in which the Settling State has filed a Released Claim against it), and (2) in the case of a Tobacco Product Manufacturer that signs this Agreement after the MSA Execution Date, such Tobacco Product Manufacturer, within a reasonable period of time after signing this Agreement, makes any payments (including interest thereon at the Prime Rate) that it would have been obligated to make in the intervening period had it been

a signatory as of the MSA Execution Date. "Participating Manufacturer" shall also include the successor of a Participating Manufacturer. Except as expressly provided in this Agreement, once an entity becomes a Participating Manufacturer such entity shall permanently retain the status of Participating Manufacturer. Each Participating Manufacturer shall regularly report its shipments of Cigarettes in or to the fifty United States, the District of Columbia and Puerto Rico to Management Science Associates, Inc. (or a successor entity as set forth in subsection (mm)). Solely for purposes of calculations pursuant to subsection IX(d), a Tobacco Product Manufacturer that is not a signatory to this Agreement shall be deemed to be a "Participating Manufacturer" if the Original Participating Manufacturers unanimously consent in writing.

"Previously Settled States Reduction" means a reduction determined by multiplying the amount to which such reduction applies by 12.4500000%, in the case of payments due in or prior to 2007; 12.2373756%, in the case of payments due after 2007 but before 2018; and 11.0666667%, in the case of payments due in or after 2018.

"Qualifying Statute" means a Settling State's statute, regulation, law and/or rule (applicable everywhere the Settling State has authority to legislate) that effectively and fully neutralizes the cost disadvantages that the Participating Manufacturers experience vis-à-vis Non-Participating Manufacturers within such Settling State as a result of the provisions of this Agreement. Each Participating Manufacturer and each Settling State agree that the model statute in the form set forth in Exhibit T (the "Model Statute"), if enacted without modification or addition (except for particularized state procedural or technical requirements) and not in conjunction with any other legislative or regulatory proposal, shall constitute a Qualifying Statute. Each Participating Manufacturer agrees to support the enactment of such Model Statute if such Model Statute is introduced or proposed (i) without modification or addition (except for particularized procedural or technical requirements), and (ii) not in conjunction with any other legislative proposal.

"Relative Market Share" means an Original Participating Manufacturer's respective share (expressed as a percentage) of the total number of individual Cigarettes shipped in or to the fifty United States, the District of Columbia and Puerto Rico by all the Original Participating Manufacturers during the calendar year immediately preceding the year in which the payment at issue is due (regardless of when such payment is made), as measured by the Original Participating Manufacturers' reports of shipments of Cigarettes to Management Science Associates, Inc. (or a successor entity acceptable to both the Original Participating Manufacturers and a majority of those Attorneys General who are both the Attorney General of a Settling State and a member of the NAAG executive committee at the time in question). A Cigarette shipped by more than one Participating Manufacturer shall be deemed to have been shipped solely by the first Participating Manufacturer to do so. For purposes of the definition and determination of "Relative Market Share," 0.09 ounces of "roll your own" tobacco shall constitute one individual Cigarette.

"Released Claims" means:

- (1) for past conduct, acts or omissions (including any damages incurred in the future arising from such past conduct, acts or omissions), those Claims directly or indirectly based on, arising out of or in any way related, in whole or in part, to (A) the use, sale, distribution, manufacture, development, advertising, marketing or health effects of, (B) the exposure to, or (C) research, statements, or warnings regarding, Tobacco Products (including, but not limited to, the Claims asserted in the actions identified in Exhibit D, or any comparable Claims that were, could be or could have been asserted now or in the future in those actions or in any comparable action in federal, state or local court brought by a Settling State or a Releasing Party (whether or not such Settling State or Releasing Party has brought such action)), except for claims not asserted in the actions identified in Exhibit D for outstanding liability under existing licensing (or similar) fee laws or existing tax laws (but not excepting claims for any tax liability of the Tobacco-Related Organizations or of any Released Party with respect to such Tobacco-Related Organizations, which claims are covered by the release and covenants set forth in this Agreement);
- (2) for future conduct, acts or omissions, only those monetary Claims directly or indirectly based on, arising out of or in any way related to, in whole or in part, the use of or exposure to Tobacco Products manufactured in the ordinary course of business, including without limitation any future Claims for reimbursement of health care costs allegedly associated with the use of or exposure to Tobacco Products.

"Released Parties" means all Participating Manufacturers and their past, present and future Affiliates, divisions, officers, directors, employees, representatives, insurers, lenders, underwriters, Tobacco-Related Organizations, trade associations, suppliers, agents, auditors, advertising agencies, public relations entities, attorneys, retailers and distributors (and the predecessors, heirs, executors, administrators, successors and assigns of each of the foregoing). Provided, however, that "Released Parties" does not include any person or entity (including, but not limited to, an Affiliate) that is itself a Non-Participating Manufacturer at any time after the MSA Execution Date, unless such person or entity becomes a Participating Manufacturer.

"Releasing Parties" means each Settling State and any of its past, present and future agents, officials acting in their official capacities, legal representatives, agencies, departments, commissions and divisions; and also means, to the full extent of the power of the signatories hereto to release past, present and future claims, the following: (1) any Settling State's subdivisions (political or otherwise, including, but not limited to, municipalities, counties, parishes, villages, unincorporated districts and hospital districts), public entities, public instrumentalities and public educational institutions; and (2) persons or entities acting in a parens patriae, sovereign, quasi-sovereign, private attorney general, qui tam, taxpayer, or any other capacity, whether or not any of them participate in this settlement, (A) to the extent that any such person or entity is seeking relief on behalf of or generally applicable to the general public in such Settling State or the people of the State, as opposed solely to

private or individual relief for separate and distinct injuries, or (B) to the extent that any such entity (as opposed to an individual) is seeking recovery of health-care expenses (other than premium or capitation payments for the benefit of present or retired state employees) paid or reimbursed, directly or indirectly, by a Settling State.

"State-Specific Finality" means, with respect to the Settling State in question:

(1) this Agreement and the Consent Decree have been approved and entered by the Court as to all Original Participating Manufacturers, or, in the event of an appeal from or review of a decision of the Court to withhold its approval and entry of this Agreement and the Consent Decree, by the court hearing such appeal or conducting such review;

(2) entry by the Court has been made of an order dismissing with prejudice all claims against Released Parties in the action as provided herein; and

(3) the time for appeal or to seek review of or permission to appeal ("Appeal") from the approval and entry as described in subsection (1)(A) hereof and entry of such order described in subsection (1)(B) hereof has expired; or, in the event of an Appeal from such approval and entry, the Appeal has been dismissed, or the approval and entry described in (1)(A) hereof and the order described in subsection (1)(B) hereof have been affirmed in all material respects by the court of last resort to which such Appeal has been taken and such dismissal or affirmance has become no longer subject to further Appeal (including, without limitation, review by the United States Supreme Court).

APPENDIX C
LIST OF WITNESSES

Witnesses at November 1st Kansas City Hearing

Department of Health, Division Of Chronic Disease, Prevention & Health Promotion

University of Missouri-Kansas City School of Dentistry

Youth with Vision

Children's Mercy Hospital

Kansas City Area Development Council

Micah McKay

Mattie Rhodes Center

Missouri Parks and Recreation Association

Fahnestock & Company, Inc.

Missouri Society for Public Health Education

Social Welfare Board and Healthy Communities of Four Corners Northwest Missouri Tobacco Coalition

Campaign for Tobacco-Free Kids

Missouri Coalition on Smoking or Health

Metropolitan Medical Society of Greater Kansas City

Missouri State Medical Association

American Lung Assn. Of Western Missouri

Health Midwest

Teens Against Tobacco Use (TATU)

Truman Medical Center

Don M. Downing

University of Missouri System

Civic Council of Greater Kansas City

MO ALPHA, Kansas City Health Department

Metropolitan Council on Child Care at Mid-America Regional Council

St. Luke's Shawnee Mission Health System

Jackson County Health Department.

Independence Health Department

MOHAKCA (Missouri Health Authorities of Kansas City Area)

Witnesses at November 8, St. Louis Hearing

Office of Administration/Budget & Planning

Missouri Chapter-American Network of Community Options & Resources (MO-ANCHOR)

St. Louis Regional Commerce and Growth Association

Adam W. Woodard

G. Edwards & Sons (St. Louis)

American Lung Association of Eastern Missouri

Missouri Coalition on Smoking or Health

American Heart Association

Missouri Department. of Health

St. Louis 2004 Access to Health

University of Missouri-Columbia Health Services Center

EFFORTS-(Emphysema Foundation for our Right to Survive)

MO-ANCHOR (Missouri Chapter of the American Network of Community Options and Resources)

Paraquad, Inc.

St. Louis City Health Department

American Cancer Society and American Lung Association

Citizens for Missouri's Children

James P. Holloran

Susan K. Orton

St. Louis Lead Coalition

Missouri Advisory Council on Alcohol & Drug Abuse

Linda Sherwin

March of Dimes

Center for Emerging Technologies

St. Louis Technology Gateway, Capital Foundation Sub-Committee

MO GASP

Nu-Voice of Greater St. Louis

Washington University School of Medicine

Unity Health System

Ron Peterson

Technology Gateway, Center for Emerging Technologies

St. Louis Connectcare, Hospital Consortium

Witnesses at November 15th Jefferson City Hearing

American Cancer Society

Missouri Coalition on Smoking or Health

Shoe-Me State Games - University of Missouri

Missouri Department of Health

Phelps County Regional Medical Center

Dr. Larry Fields

Hospital Plaintiffs

Hannibal Regional Hospital

Sullivan County Memorial Hospital

Hermann Area District Hospital

Office of Administration, Division of Budget and Planning

Missouri Attorneys General's Office

High School Heroes (American Lung Association)

FCCLA (Families, Careers and Community Leaders of America, Missouri Department of Health)

Missouri Chapter of American Network of Community Options and Resources (MO-ANCHOR)

Missouri Health Care Association

Health Adventure Center

Kansas City Missouri Department of Health

Missouri Society of Public Health Education

Don Downing

Missouri Council of the Blind

Governor's Council on Disability

American Association of Retired Persons (A.A.R.P.)

Missouri Centers for Independent Living (MOCIL)

Alice Turner

Beth Bourgeret



MISSOURI SENATE
JEFFERSON CITY

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STATE CAPITOL, ROOM 434
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COMMITTEES:
WAYS & MEANS
JUDICIARY
LOCAL GOVERNMENT &
ECONOMIC DEVELOPMENT
PENSIONS & GENERAL LAWS
ETHICS
JOINT COMMITTEE ON
ADMINISTRATIVE RULES

January 12, 2000

Senator John Scott, Chairman
Joint Interim Committee on Tobacco
Room 416, State Capitol
Jefferson City, MO 65101

Dear Senator Scott:

In response to your letter dated December 29, 1999, dissenting recommendations to the Interim Committee on Tobacco Report (herein "Interim Report" or "Report") are attached herewith.

The Interim Report reflects a dramatic shift in the debate regarding the constitutional classification and purported use of the tobacco settlement proceeds.

Since November 1998, the issue of Missouri's historic tobacco settlement has raised considerable speculation regarding its constitutional classification under Article X (the Hancock Amendment) and its potential use.

During the 1999 session, legislation was introduced that would have allowed the people of the state of Missouri to decide whether the settlement proceeds would be classified as total state revenue and, therefore, subject to the provisions of Article X; or, in the alternative, excluded from total state revenue and retained by the state, subject to appropriations. At that time, the governor argued that the proceeds from the settlement were reimbursement to the state for costs associated with tobacco related illnesses, and thus not subject to Article X.

Now, Subsection II of the report indicates that the interim committee finds that "a constitutional amendment [should] be adopted by the people of the state to exclude the proceeds from the calculation of total state revenue and to allow the use of the settlement proceeds for specific purposes."

Page two

There are two policy concerns. First, making the affirmative declaration that the proceeds are excluded from total state revenue deprives the people of the state their opportunity to decide whether the proceeds should be returned to those who initially paid the bills associated with tobacco related illnesses.

And, second, how will the General Assembly define categories narrow enough to avoid political pandering, while general enough to accommodate future identifiable health needs?

If a constitutional question is submitted to the people of Missouri, it is imperative that the General Assembly provide an "either/or" option for voters so that the constitutional question regarding total state revenue is disposed. Should the legislature submit only one option, as recommended, and that option fails, the constitutional issue remains and litigation will ensue. As a result, the Interim Report fails to adequately address the constitutional and policy concerns raised in the last legislative session.

The Interim Report fills the trough from which special interests will feed.

The recommendations of the Interim Report outline the following:

- a trust fund will be created;
- its deposits will not be spent unless a constitutional amendment authorizing its expenditures is adopted by the people;
- the recommended constitutional provision authorizes only the proceeds expenditure (see SB549, attached);

Millions of dollars will be spent in support of the constitutional amendment by special interest groups anticipating a portion of the proceeds for their projects. Missouri taxpayers will have two options--vote to spend the money, or lose the right to a refund until they vote to spend the money. The recommendations reflect a lose-lose scenario for those Missourians who expect all or a portion of the proceeds to be refunded.

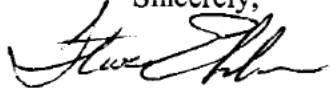
Page three

The singular path down which the recommendations of the Interim Report lead does not provide Missourians with a legitimate option. This historic settlement, and its potential proceeds, are not the property of the state. If the people of Missouri desire that all or a portion of the proceeds are used by their government for specific purposes, then the issues should be placed before them with honesty and clarity, not a political subterfuge to guarantee their expenditure.



DAVID J KLARICH
26th Senatorial District

Sincerely,



STEVE EHLMANN
23rd Senatorial District



FRANC FLOTRON
7th Senatorial District

Senator Klarich offered SSA 2 for SA 3:

SENATE SUBSTITUTE AMENDMENT NO. 2 FOR
SENATE AMENDMENT NO. 3

Amend Senate Substitute No. 2 for Senate Bill No. 288, Page 2, Section 1, Lines 1-5, by deleting said lines and replace in lieu thereof, the following:

"5. The trust fund shall be included in total state revenues as defined in article X, section 17, of the Missouri Constitution."

Senator Klarich moved that the above substitute amendment be adopted.

Senator Mathewson assumed the Chair.

Senator Ehlmann offered SA 1 to SSA 2 for SA 3:

SENATE AMENDMENT NO. 1 TO
SENATE SUBSTITUTE AMENDMENT NO. 2 FOR
SENATE AMENDMENT NO. 3

Amend Senate Substitute Amendment No. 2 for Senate Amendment No. 3 to Senate Substitute No. 2 for Senate Bill No. 288, Page 1, Section 1, Line 9, by adding the following:

", unless the citizens of the state of Missouri have approved or rejected, at an election which shall be held and conducted on Tuesday next following the first Monday in November, 2000, pursuant to the applicable laws and constitutional provisions of this state for the submission of referendum measures by the general assembly, ballots of submission containing the following language:

"Shall all funds received by the state of Missouri as a result of any legal settlement or award related to

public health or health-related issues of smoking be considered excess revenues and refunded pursuant to Article X, Section 18 of the Missouri Constitution?"

AND

"Shall all funds received by the State of Missouri as a result of any legal settlement or award related to public health or health-related issues of smoking not be considered as excess revenues under Article X, Section 18 of the Missouri Constitution, but remain subject to appropriation?"

Senator Ehlmann moved that the above amendment be adopted.

At the request of Senator Quick, SB 288, with SS No. 2, SA 3, SSA 2 for SA 3 and SA 1 to SSA 2 for SA 3 (pending), was placed on the Informal Calendar.

REPORTS OF STANDING COMMITTEES

Senator Caskey, Chairman of the Committee on Civil and Criminal Jurisprudence, submitted the following report:

Mr. President: Your Committee on Civil and Criminal Jurisprudence, to which was referred SB 397, begs leave to report that it has considered the same and recommends that the Senate Committee Substitute, hereto attached, do pass.

On motion of Senator DePasco, the Senate recessed until 3:00 p.m.

RECESS

The time of recess having expired, the Senate was called to order by Senator Mathewson.

RESOLUTIONS

Senator Bentley offered Senate Resolution No. 450, regarding Kathleen Means, Ozarks Technical

Community College, which was adopted.

Senator Stoll offered Senate Resolution No. 451, regarding Judge Charles and Anna Sheehan, House Springs, which was adopted.

SENATE BILLS FOR PERFECTION

Senator Quick moved that SB 288, with SS No. 2, SA 3, SSA 2 for SA 3 and SA 1 to SSA 2 for SA 3 (pending), be called from the Informal Calendar and again taken up for perfection, which motion prevailed.

SA 1 to SSA 2 for SA 3 was again taken up.

At the request of Senator Ehlmann, the above amendment was withdrawn.

Senator Ehlmann offered SA 2 to SSA 2 for SA 3:

SENATE AMENDMENT NO. 2 TO

SENATE SUBSTITUTE AMENDMENT NO. 2 FOR

SENATE AMENDMENT NO. 3

Amend Senate Substitute Amendment No. 2 for Senate Amendment No. 3 to Senate Substitute No. 2 for Senate Bill No. 288, Page 1, Section 1, Line 9, by adding the following:

", unless the citizens of the state of Missouri have approved or rejected, at an election which shall be held and conducted on Tuesday next following the first Monday in November, 2000, pursuant to the applicable laws and constitutional provisions of this state for the submission of referendum measures by the general assembly, ballots of submission containing the following language; the ballot measure receiving the most votes shall be the provision enacted.

"Shall all funds received by the state of Missouri as a result of any legal settlement or award related to public health or health-related issues of smoking be considered excess revenues and refunded pursuant to Article X, Section 18 of the Missouri Constitution?"

AND

"Shall all funds received by the State of Missouri as a result of any legal settlement or award related to public health or health-related issues of smoking not be considered as excess revenues under Article X, Section 18 of the Missouri Constitution, but remain subject to appropriation?"

Senator Ehlmann moved that the above amendment be adopted.

Senator Scott assumed the Chair.

Senator Klarich requested a roll call vote be taken on the adoption of SA 2 to SSA 2 for SA 3 and was joined in his request by Senators Childers, DePasco, Ehlmann and Singleton.

SA 2 to SSA 2 for SA 3 failed of adoption by the following vote:

YEAS--Senators			
Childers	Ehlmann		
	Flotron		
		Graves	
Kenney	Kinder		
	Klarich		
		Rohrbach	
Russell	Singleton		
	Steelman		
		Yeckel--12	
NAYS--Senators			
Banks	Bland		

Caskey
Clay
DePasco
Goode
House
Howard
Jacob
Johnson
Mathewson
Maxwell
Mueller
Quick
Schneider
Scott
Sims
Staples
Stoll
Wiggins--20
Absent--Senator Bentley--1
Absent with leave--Senator Westfall--1

SECOND REGULAR SESSION

SENATE BILL NO. 549

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS QUICK, SCOTT, STOLL, DePASCO, MATHEWSON,
HOWARD, JOHNSON, WIGGINS, MAXWELL, CLAY, BLAND AND STAPLES.

Pre-filed December 1, 1999, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

2775S.031

AN ACT

To amend chapter 196, RSMo, by adding thereto one new section relating to the establishment of the Missouri tobacco settlement trust fund.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 196, RSMo, is amended by adding thereto one new
2 section, to be known as section 196.1014, to read as follows:

196.1014. 1. There is hereby created in the state treasury the "Missouri
2 Tobacco Settlement Trust Fund".

3 2. The state treasurer shall deposit in the Missouri tobacco settlement trust
4 fund all moneys received by the state of Missouri which are the proceeds of any
5 award or settlement resulting from any dispute between the state and any company
6 which manufactures, sells or promotes tobacco or tobacco products.

7 3. Notwithstanding the provisions of section 33.080, RSMo, to the contrary,
8 moneys deposited in the Missouri tobacco settlement trust fund, including any
9 interest thereon, shall not revert to the credit of the general revenue fund at the end
10 of the biennium.

11 4. The moneys deposited in the Missouri tobacco settlement trust fund,
12 including any interest thereon, shall not be appropriated by the general assembly
13 without additional constitutional authority specifying the purpose or purposes of
14 such appropriation and designating whether the moneys deposited in the trust fund
15 are included or excluded from "total state revenues" as defined in article X, section
16 17, of the Missouri Constitution.

17 5. The commissioner of administration shall maintain data in an electronic

18 format on receipts to and expenditures from the Missouri tobacco settlement trust
19 fund. Such data shall be updated at least quarterly, shall indicate expenditures by
20 object type and class, and shall be available to the public on the Internet.

✓

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MICHAEL R. GIBBONS
Assistant Minority Floor Leader
State Representative
District 94

COMMITTEES
Appropriations - Social Services
& Corrections
Civil & Administrative Law
Criminal Law
Judiciary
Rules, Joint Rules,
Bills Perfected and Printed
Ways & Means

January 6, 2000

The Honorable John Scott and Tim Van Zandt
Missouri Senate and House of Representatives
Jefferson City, MO 65101

Re: Report of the Joint Interim Committee on Tobacco

Dear Senator Scott and Representative Van Zandt:

I have reviewed the report of the Joint Interim Committee on Tobacco and have signed it because I am in support of Recommendation one which provides:

1. "Propose a constitutional amendment to the voters of the state to allow the receipt and use of the tobacco settlement monies for specific purposes."

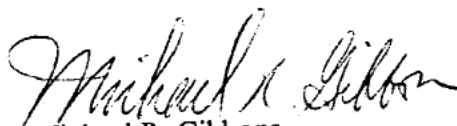
I respectfully dissent from recommendations two and three:

2. "Enact enabling legislation prior to the submission of the constitutional amendment that establishes a trust fund for deposit and accounting of the settlement monies."
3. "Enact enabling legislation that sets specific guidelines and percentages for use of the monies and is contingent upon passage of the constitutional amendment."

I do not believe that the enabling legislation is necessary prior to the submission of the constitutional amendment. It seems to me that the people should be able to speak before enabling legislation is pursued. Furthermore, while I support guidelines and a nexus between the basis for the settlement and use of the funds, namely prevention, cessation and health care related to tobacco use, I do not support eliminating the Legislature's duty to set priorities and expenditures within certain parameters through the appropriations process.

I applaud the way the Joint Interim Committee on Tobacco was conducted and look forward to working with you this session on these issues.

Yours truly,



Michael R. Gibbons